

AN ORDINANCE **101817**

**APPROVING THE CONTINUATION OF THE 2006 PROJECT WINTER ASSISTANCE RELIEF MOBILIZATION (WARM) PLAN THROUGH DECEMBER 2006, AUTHORIZING EXECUTION OF AN AGREEMENT WITH CPS ENERGY, AND APPROVING THE ISSUANCE OF ASSISTANCE CREDITS IN A PROJECTED AMOUNT UP TO \$350,000.00 FOR THE PERIOD OCTOBER 1, 2005 THROUGH DECEMBER 31, 2006; AND AUTHORIZING THE EXECUTION OF SUBCONTRACTS WITH LOCAL NON-PROFIT AGENCIES FOR DISTRIBUTION OF WARM ASSISTANCE CREDITS TO CPS RATEPAYERS.**

\* \* \* \* \*

**WHEREAS,** Project Winter Assistance Relief Mobilization (WARM) was established by the City Council in 1982 in order to provide utility relief to vulnerable, low-income residents of San Antonio, Bexar County, and other surrounding areas which are served by CPS Energy (CPS); and

**WHEREAS,** Project WARM is financed by interest earned from the Project WARM Trust, which is an endowment established by the Wagner and Brown Partnership of Midland; and

**WHEREAS,** all current delegate agencies contracted through the City's Consolidated Funding Process have agreed to provide WARM assistance certification services for the City; and

**WHEREAS,** the City's Department of Community Initiatives (DCI) desires to use the services of various delegate agencies to provide additional outreach to potential WARM recipients to the City; and

**WHEREAS,** Project WARM is currently in operation and is jointly administered by City of San Antonio's Community Action Division and CPS; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

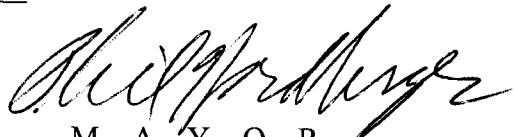
**SECTION 1.** The 2006 Project Winter Assistance Relief Mobilization (WARM) Plan, which provides for the distribution of up to \$350,000.00 in utility assistance credits to eligible CPS Energy (CPS) ratepayers for the period October 1, 2005 through December 31, 2006, is hereby approved. The City Manager, or her designee, or the Director of the Department of Community Initiatives is authorized to execute an agreement with CPS for implementation of the 2006 Project WARM Plan. A copy of said agreement, in substantially final form, as well as a copy of the WARM Plan, are attached hereto and incorporated herein for all purposes as Attachment I.

**SECTION 2.** The City Manager, or her designee, or the Director of the Department of Community Initiatives is authorized to execute memoranda of agreement for the period October 1, 2005 through December 31, 2006 with various agencies selected by the Department of

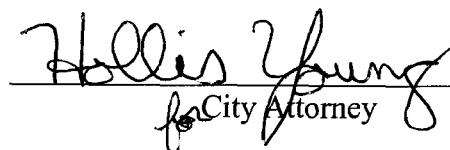
Community Initiatives in order to assist the City of San Antonio in the implementation of the plan. A copy of said memorandum of agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as Attachment II.

**SECTION 3.** This ordinance shall become effective on and after December 25, 2005.

PASSED AND APPROVED this 15<sup>th</sup> day of December 2005.

  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

# Agenda Voting Results

**Name:** 5A. & 5B

**Date:** 12/15/05

**Time:** 10:24:39 AM

**Vote Type:** Multiple selection

**Description:** An Ordinance approving the continuation of the 2006 Project Winter Assistance Relief Mobilization (WARM) Plan through December 2006, authorizing execution of an agreement with CPS Energy, and approving the issuance of assistance credits in a projected amount up to \$350,000.00 for the period October 1, 2005 through December 31, 2006; and authorizing the execution of subcontracts with local non-profit agencies for distribution of WARM assistance credits to CPS ratepayers.

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10	Not present			
MAYOR PHIL HARDBERGER	MAYOR		x		

*Mayor Hardberger abstained  
on item 5B*

**AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND  
CPS ENERGY IN CONNECTION WITH PROJECT WARM**

This agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation, acting by and through its Director of the Department of Community Initiatives pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and CPS Energy (hereinafter referred to as "CPS").

WHEREAS, the Project Winter Assistance Relief Mobilization (hereinafter referred as "W.A.R.M.") Plan, which provides utility relief to needy residents of the City of San Antonio, was established by the City Council in 1982; and

WHEREAS, Project W.A.R.M. is financed by voluntary donations to CPS Energy and from funds from the Brown and Wagner Trust; and

WHEREAS, Project W.A.R.M. is jointly administered by the City of San Antonio Department of Community Initiatives, Community Action Division and CPS Energy; and

WHEREAS, it is now necessary to execute an agreement between the City and CPS Energy to set forth the responsibilities of the parties; and

NOW THEREFORE, the parties hereto severally and collectively agree and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. TERM**

1.1 Except as otherwise provided for pursuant to the provisions hereof, this agreement shall commence on October 1, 2005 and shall terminate on December 31, 2006.

**II. PROJECT WINTER ASSISTANCE  
RELIEF MOBILIZATION PLAN**

2.1 City and CPS Energy agree to implement the Project Winter Assistance Relief Mobilization Plan in accordance with the provisions set forth in the document, which is attached hereto and incorporated herein for all purposes as Attachment I.

### **III. SUBCONTRACTING**

- 3.1 The City may subcontract their WARM assistance credits to local non-profit agencies for distribution to CPS ratepayers. The City shall ensure that these agencies will adhere to the same eligibility criteria and procedures the City uses for assisting CPS ratepayers with WARM assistance credits.

### **IV. TERMINATION**

- 4.1 This Agreement may be terminated by either party without cause provided written notice is given thirty (30) days prior to the proposed termination date.

### **V. CONFIDENTIAL INFORMATION**

- 5.1 City and CPS Energy hereby agree to maintain the confidentiality of any record directly related to or generated as a result of this agreement in accordance with all Local, State and Federal laws.

### **VII. NOTICES**

- 6.1 For purposes of this CONTRACT, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City of San Antonio  
ATTN: Director, Department of Community Initiatives  
P.O. Box 839966  
San Antonio, Texas 78283-3966

CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771

Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

### **VIII. SEVERABILITY**

- 8.1 In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; it is also the intention of the parties hereto that in lieu of each provision of this agreement that is invalid, illegal, or unenforceable, there be added as a part of the agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible, legal, valid and enforceable.

## **IX. TEXAS LAW TO APPLY**

9.1 This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created herewith are performable in the State of Texas.

## **X. CAPTIONS**

10.1 The captions contained in this agreement are for convenience of reference only, and in no way limit or enlarge the terms or conditions of this agreement.

## **XI COMPLIANCE WITH LAWS AND REGULATIONS**

11.1 All of the work performed under this Agreement by the participants shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar.

## **XII. ENTIRE AGREEMENT**

12.1 This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representatives or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by both parties.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_.

**CITY OF SAN ANTONIO**

**CPS ENERGY**

\_\_\_\_\_  
Dennis J. Campa  
Director of Community Initiatives

APPROVED AS TO FORM: \_\_\_\_\_  
Assistant City Attorney

**PROJECT WINTER ASSISTANCE RELIEF MOBILIZATION PLAN – FY 2006**

Introduction

Project WARM (Winter Assistance Relief Mobilization) was established in 1982 to provide utility relief to vulnerable City Public Service (CPS) ratepayers. The project is funded entirely through voluntary donations and through investment returns on a Project WARM Trust established in 1985 by the Wagner and Brown Partnership of Midland, Texas. Only donations to Project WARM and investment income from the trust account are used for utility assistance. As such, the project perpetuates itself indefinitely without accessing the corpus of the trust.

Local Administering Agency

The City of San Antonio's (City) Department of Community Initiatives (DCI) and CPS jointly administer Project WARM. CPS administers the project from a fiscal perspective, to include coordination of all activities related to donations, investments, fund administration, and ratepayer credits. The DCI's Community Action Division (CAD) is responsible for determining the eligibility of CPS ratepayers and for certifying the assistance amounts of eligible applicants to CPS.

CPS Activities\*

- (1) Print and distribute brochures informing ratepayers of the availability of utility assistance and conservation programs
- (2) Coordinate fund-raising and donations
- (3) Manage Project WARM accounts, investments, donations, and trust distributions
- (4) Process ratepayer certifications (with assistance amounts) from DCI
- (5) Coordinate project with DCI
- (6) Prepare a monthly/annual project fiscal summary

\*Funding for these activities will not be from Project WARM funds.

DCI Activities\*

- (1) Conduct community outreach through CAD field offices
- (2) Accomplish ratepayer intake and eligibility determination
- (3) Provide ratepayer certifications (with assistance amounts) to CPS
- (5) Coordinate project with CPS
- (6) Maintain case folders and records
- (6) Prepare monthly project impact reports

\*Funding for these activities will not be from Project WARM funds.

### Outreach Activities

Outreach activities will be consistent with the intent of the project goals and objectives. A concerted effort will be made to inform as many potential applicants as possible about the project.

In addition to CPS bill inserts, there will be extensive utilization of the social service delivery network, public service announcements, and the media to publicize the project. Outreach activities will be conducted in both English and Spanish.

### Service Delivery Period

The project will be extended from October 2005 to December 2006 to coincide with its partner program, Project REAP and hereafter operate from January 1<sup>st</sup> to December 31<sup>st</sup> each year.

### Service Delivery Coverage

This project will be available to all CPS ratepayers living within the CPS service area. The project will not be limited to any special impact area. It is anticipated that approximately 10-20% of the assistance funds will be provided to CPS ratepayers living outside the city limits of San Antonio.

### Intake Centers

Applications will be taken at all CAD offices. Other locations will be utilized as required.

### Eligibility and Certification

CAD will determine the eligibility of applicants based on established criteria, prioritizing those with the greatest need. The names of those eligible, together with corresponding assistance amounts, will be certified electronically to CPS. The total assistance granted to all eligible applicants will not exceed the funds available in the Project WARM assistance account.

### Reporting Requirements

CAD will prepare a monthly report containing the following data:

- (1) Total number of households and household members assisted
- (2) Summary of assistance by Council District
- (3) Households served by priority category
- (4) Total funds credited

### Program Guidelines

The intent of the project is to provide assistance to eligible CPS ratepayers in the San Antonio area. Assistance is determined by eligibility criteria that include demonstrated need, priority



category, household income, household resource management, co-payment requirement, and the ratepayer's CPS payment history. Applicants must be residents of the CPS service area and be a CPS ratepayer.

### Eligibility Guidelines

#### A. Income

Applicants must have a total household income at or below 125% of the Federal Poverty Level (FPL) at the time of application. As of October 1, 2005, the 125% FPL has been established as follows:

FAMILY SIZE	YEARLY INCOME *
1	\$11,962
2	16,037
3	20,112
4	24,187
5	28,262
6	32,337
7	36,412
8	40,487

\* For family units with more than eight (8) members, add \$4,075.00 for each additional family member to the guidelines. Household income may be adjusted downward per existing CAD policies to take into consideration recurring medical prescription cost for seniors.

New FPL guidelines are normally issued between January and March each year.

#### B. Resources

An applicant household must demonstrate that a CPS payment was made from its total household resources within the last 60 days. The project will count as total resources all income that supports the household. Total resources will reflect the following as income: wages, benefits (i.e. SS, SSI, TANF, food stamps, etc.), rental/utility subsidies, pensions, family assistance, grants, and workmen's compensation. The applicant household must demonstrate that it has managed its resources in an appropriate manner and has exhausted all other means to make payment on its CPS account.

#### C. CPS Ratepayer

The applicant must have a CPS statement in their name or in the name of the head of household. If an applicant's bill is not in the applicant's name or the head of household's name, the applicant must initiate a name change on the CPS account prior to services being rendered. In the event that a household is unable to accomplish this due to a

legitimate financial hardship, CAD casework staff will inform the client of procedures on establishing a payment plan to relieve any ratepayer arrears owed CPS.

#### D. Priority

Priority will be given to eligible applicants demonstrating an inability to make the required payment on their CPS bill. Eligible, priority applicants include the elderly (age 60 years and older), those identified as medical Critical Care ratepayers by CPS, ratepayers that have a documented disability, and families with small children (age three years and younger). All of these priority groups must also meet the income eligibility criteria.

#### E. Co-Payment

A co-payment will be required from each applicant household that is assisted by this project. The co-payment will be a minimum of \$5.00.

#### F. Limitation of Payment

Each applicant household may be eligible for assistance not to exceed \$250.00. Assistance above \$250.00 requires CAD management staff approval. The exact amount of assistance will be based on the household's demonstrated need, effective utilization of the total household resources, and the applicant's co-payment. Normally, applicants are eligible for assistance once per year and may not receive utility assistance from Project REAP (Residential Energy Assistance Partnership) in the same year assistance is received from Project WARM. If funds are available, and the household crisis continues, additional assistance within the same calendar year may be provided with the approval of CAD management staff.

#### G. Allowable Assistance

Only credits to CPS for past due or current bills related to the utilization or procurement of energy can be provided with Project WARM funds. These funds cannot be used to pay for illegal usage, returned check fees, reconnection fees, or deposits. The only exception is that deposits may be paid for applicants who are homeless and in the process of establishing permanent housing. In this case, a maximum of \$150.00 can be applied towards their CPS deposit.

#### H. Renters

Project WARM may not serve renters who do not pay their CPS bill separate from their rent. For those renters who pay their CPS bill separate from the rent, the provisions set forth in this plan will apply. For the purpose of this project, renters receiving assistance under the H.U.D. Section 8 Program do not qualify for assistance if they receive a Housing Assistance Utility Payment in addition to their rent subsidy.

### I. Waivers

In cases of extreme hardship or emergencies, the CAD Manager or his designees may grant special waivers for any of the eligibility criteria or assistance limits. A waiver may not be granted for the requirement that the applicant be a CPS ratepayer.

### J. Additional Requirements

The following additional requirements will be implemented only with the concurrence of both the City and CPS:

CPS ratepayers receiving Project WARM assistance must fulfill the following two requirements (note: ratepayers who are 60 years and older and/or certified as Critical Care by CPS are exempt from these requirements):

- (1) Homeowners must complete a CPS Home Energy Audit; renters must attend a CPS Home Energy Education Seminar.
- (2) Homeowners and renters must attend a Financial Literacy Workshop.

Anyone receiving assistance not completing these two requirements within four months of the date assistance was posted to their CPS account will have that assistance rescinded and will not be eligible for additional assistance for a period of two calendar years. Those ratepayers unable to participate in the Home Energy Audit/Seminar and Financial Literacy Workshop due to a documented medical condition may submit a written waiver request for these requirements to the CAD Manager.

### Appeals Process

In order to provide equitable services to all applicants, those who have been denied assistance will have the right to be informed in writing of the reasons for the denial of requested services; the right of appeal to the Casework Supervisor, Program Manager, and the Community Action Manager in succession; and, the right to a prompt resolution of the appeal. In all appeals, the determination by the DCI Director will be final.

### Assistance Credits

Neither the City nor CPS will charge administrative costs to this project. It is projected that up to \$400,500 will be available for Project WARM assistance in 2006. The actual amount will be subject to the availability of funds in the Project WARM account.

### Impact Analysis

It is projected that 1,602 CPS ratepayers will be assisted through Project WARM in 2006.

### Outside Agencies

At its sole discretion, the City may contract with local non-profit agencies to distribute all or some of the Project WARM funds. These agencies will adhere to all the provisions of the current Project WARM plan. No administrative or other costs will be charged by these agencies to CPS or Project WARM.

### Audit

If required, the appropriate staff will conduct audits.

MEMORANDUM OF AGREEMENT BETWEEN  
THE CITY OF SAN ANTONIO  
AND  
NAME OF AGENCY

This Memorandum of Agreement is entered into by and between the City of San Antonio, (hereinafter referred to as the CITY), a Texas municipal corporation, acting by and through its Director of Community Initiatives as authorized by City Council on \_\_\_\_\_, pursuant to Ordinance No. \_\_\_\_\_, and the NAME OF AGENCY (hereinafter referred to as the AGENCY).

WHEREAS the CITY, and the AGENCY (hereinafter referred to as "the Parties") are dedicated to providing assistance to low-income CPS Energy (hereinafter referred to as "CPS") ratepayers; and

WHEREAS each of the Parties wish to promote the public purpose of providing a community safety net for individuals in need of emergency assistance;

NOW THEREFORE:

IT IS HEREBY AGREED that the Parties participate in determining eligibility for Project Winter Assistance Relief Mobilization (Project WARM) established by CPS for the purpose of providing utility assistance credits to eligible CPS ratepayers. Such participation shall be defined in accordance with the following parameters and limitations:

1. TERM.

This MEMORANDUM OF AGREEMENT shall commence on the date of execution and shall terminate on DATE unless earlier termination or extension shall occur pursuant to any provision hereof.

2. CONSIDERATION.

AGENCY and CITY agree that the contract mutually benefits the parties and as such, no administrative or other costs shall be charged by AGENCY to the CITY, CPS, or Project WARM. AGENCY agrees to provide the CITY with recommended eligible applicants to receive assistance credits in an amount not to exceed \$\_\_\_\_\_ for the agreement period.

3. PROGRAM GUIDELINES.

The intent of Project WARM is to provide assistance to eligible CPS ratepayers in the San Antonio area. Assistance is determined by eligibility criteria that include demonstrated need, priority category, household income, household resource management, co-payment requirement, and the ratepayer's CPS payment history. Applicants must be residents of the CPS service area and be a CPS ratepayer.

#### 4. SCOPE OF WORK.

##### 4.1 Outreach Activities

AGENCY shall outreach eligible CPS Ratepayers through its program in the community.

##### 4.2 Eligibility and Certification

AGENCY shall determine the eligibility of applicants based on criteria in Section 4.2.2 of this agreement, prioritizing those with the greatest need. AGENCY shall complete a Community Action Intake Form and a Project WARM / REAP Authorization form for each applicant as directed by the CITY through City's Department of Community Initiatives, Community Action Division (hereinafter referred to as (CAD)). AGENCY shall provide CITY with the names of those eligible, together with corresponding assistance amounts in accordance with Department Directives set forth by the CITY's Department of Community Initiatives for Project WARM.

##### 4.2.2 Eligibility Guidelines

###### A. Income

Applicants must have a total household income at or below 125% of the Federal Poverty Level (FPL) at the time of application. As of October 1, 2005, the 125% FPL has been established as follows:

FAMILY SIZE	YEARLY INCOME *
1	\$11,962
2	16,037
3	20,112
4	24,187
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\* For family units with more than eight (8) members, add \$4,075.00 for each additional family member to the guidelines. Household income may be adjusted downward per existing CAD policies to take into consideration recurring medical prescription cost for seniors.

###### B. Resources

An applicant household must demonstrate that a CPS payment was made from its total household resources within the last 60 days. The project will count as total resources all income that supports the household. Total resources will reflect the following as income: wages, benefits (i.e. SS, SSI, TANF, food stamps, etc.), rental/utility subsidies, pensions, family assistance, grants, and workmen's compensation. The applicant household must demonstrate that it has managed its resources in an appropriate manner and has exhausted all other means to make payment on its CPS account.

#### C. Priority

Priority will be given to eligible applicants experiencing a financial or other hardship and demonstrating an inability to make the required payment on their CPS bill. Eligible, priority applicants include the elderly (age 60 years and older), those identified as medical Critical Care ratepayers by CPS, ratepayers that have a documented disability, and families with small children (age three years and younger). All of these priority groups must also meet the income eligibility criteria.

#### D. Co-Payment

A co-payment will be required from each applicant household that is assisted by this project. The co-payment will be a minimum of \$5.00.

#### E. Limitation of Payment

Each applicant household may be eligible for assistance not to exceed \$\_\_\_\_. The exact amount of assistance will be based on the household's demonstrated need, effective utilization of the total household resources, and the applicant's co-payment. Normally, applicants are eligible for assistance once per year and may not receive utility assistance from Project REAP (Residential Energy Assistance Partnership) in the same year assistance is received from Project WARM, unless authorized by the City. If funds are available, and the household crisis continues, additional assistance within the same calendar year may be provided with the approval of CAD management staff.

#### F. Allowable Assistance

Only credits to CPS for past due or current bills related to the utilization or procurement of energy can be provided with Project WARM funds. These funds cannot be used to pay for illegal usage, returned check fees, reconnection fees, or deposits. The only exception is that deposits may be paid for applicants who are homeless and in the process of establishing permanent housing. In this case, a maximum of \$150.00 can be applied towards their CPS deposit.

### G. Renters

Project WARM may not serve renters who do not pay their CPS bill separate from their rent. For those renters who pay their CPS bill separate from the rent, the provisions set forth in this plan will apply. For the purpose of this project, renters receiving assistance under the H.U.D. Section 8 Program do not qualify for assistance if they receive a Housing Assistance Utility Payment in addition to their rent subsidy.

### H. Waivers

In cases of extreme hardship or emergencies, the AGENCY may grant special waivers for any of the eligibility criteria or assistance limits. A waiver may not be granted for the requirement that the applicant be a CPS ratepayer.

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### I. CPS Ratepayer

The applicant must have a CPS statement in their name or in the name of the head of household. If an applicant's bill is not in the applicant's name or the head of household's name, the applicant must initiate a name change on the CPS account prior to services being rendered. In the event that a household is unable to accomplish this due to a legitimate financial hardship, AGENCY staff will provide budgeting assistance and inform the client of procedures on establishing a payment plan to relieve any ratepayer arrears owed CPS.

### 4.3 Appeals Process

In order to provide equitable services to all applicants, those who have been denied assistance will have the right to be informed in writing of the reasons for the denial of requested services; the right of appeal to the AGENCY management, then, to the CAD management in succession; and, the right to a prompt resolution of the appeal. In all appeals, the determination by the Director of the Department of Community Initiatives will be final.

## 5. DOCUMENTATION

AGENCY shall maintain the Community Action Intake Form, the Project WARM/REAP Authorization form, a copy of the applicant's delinquent CPS bill, proof of eligibility, proof of co-payment, and any waivers requested or granted in a file that shall be made available, upon request, to CPS, the CITY or its representatives. Immediately upon termination of this agreement, and if no subsequent agreement between the parties shall continue this project, AGENCY shall provide all applicant and project records to the CITY.



## 6. REPORTING REQUIREMENTS

AGENCY shall provide to the CITY on the \_\_\_\_ day of each month, a monthly report containing the following data:

- (1) Total number of households and household members assisted
- (2) Summary of assistance by Council District
- (3) Households served by priority category
- (4) Total funds credited

## 7. CONFIDENTIAL INFORMATION

The PARTIES agree to maintain the confidentiality of any record directly related to or generated as a result of this agreement in accordance with all Local, State, and Federal Laws. AGENCY understands that work provided through this agreement is subject to the Public Information Act, Government Code Section 552.021. Therefore, if AGENCY receives inquiries regarding documents within its possession pursuant to this agreement, AGENCY shall within twenty-four (24) hours of receiving the request forward such requests to CITY for disposition.

## 8. INDEMNITY

**AGENCY AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

- (A) AGENCY covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to AGENCY's activities under this Contract, including any acts or omissions of AGENCY, any agent, officer, director, representative, employee, consultant or subcontractor of AGENCY, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED**

**OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. AGENCY shall promptly advise the CITY in writing of any claim or demand against the CITY or AGENCY known to AGENCY related to or arising out of AGENCY's activities under this Contract and shall see to the investigation of and defense of such claim or demand at AGENCY's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving AGENCY of any of its obligations under this paragraph.**

- (B) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article is an INDEMNITY extended by AGENCY to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. AGENCY further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

#### **9. TERMINATION BY NOTICE**

This MEMORANDUM OF AGREEMENT may be terminated by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

#### **10. TERMINATION FOR CAUSE**

Should either party default in the performance of any of the terms or conditions of this MEMORANDUM OF AGREEMENT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this MEMORANDUM OF AGREEMENT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

## 11. TERMINATION BY LAW

If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this MEMORANDUM OF AGREEMENT shall automatically terminate as of the effective date of such prohibition.

## 12. CONFLICT OF INTEREST

12.1 AGENCY acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a City Officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any CITY Agency such as CITY owned utilities. An officer or employee has "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individuals or entities is party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of this business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

12.2 Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. Contractor further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

## 13. NOTICES

For purposes of this agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City of San Antonio  
Department of Community Initiatives  
Community Action Division  
115 Plaza de Armas Ste. 210  
San Antonio, TX 78205

AGENCY  
ADDRESS

#### 14. AMENDMENT

Except where the terms of this MEMORANDUM OF AGREEMENT expressly provide otherwise, any amendment to this MEMORANDUM OF AGREEMENT shall not be binding on the parties unless such amendment be in writing, executed by all the Parties and dated subsequent to the date hereof.

#### 15. COMPLIANCE WITH LAWS AND REGULATIONS

It is understood and agreed by the Parties hereto, that changes in local, State and Federal rules, regulations or laws applicable hereto, including the Project WARM Plan, may occur during the term of this MEMORANDUM OF AGREEMENT and that any such changes shall be automatically incorporated into this MEMORANDUM OF AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The Parties expressly agree to comply with all applicable federal, state, and local laws.

#### 16. INDEPENDENT CONTRACTOR

The Parties agree that they will provide services under this Memorandum of Agreement as independent parties. The Parties to this Memorandum of Agreement further agree that they have no authority to bind the others or to hold out to third parties that it has authority to bind the others; and nothing herein contained shall be deemed or construed by the Parties hereto or any third party as creating the relationship of employer-employee, principal-agent, partners or joint venturers. Furthermore, there is no intention on the part of the Parties hereto to create or otherwise form a joint enterprise under or pursuant to this Memorandum of Agreement. The Parties to this Memorandum of Agreement do not have a pecuniary purpose, let alone a common one. The purpose of this Agreement is to further the public good, not to gain a profit. The Parties do not have an equal right of control over any aspect of the Memorandum of Agreement. Each of the Parties to this Memorandum of Agreement have separate and independent duties and obligations over which they have control.

#### 17. TEXAS LAW TO APPLY

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created herewith are performable in the State of Texas, County of Bexar.

#### 18. CAPTIONS

The captions contained in this agreement are for convenience of reference only , and in

no way limit or enlarge the terms or conditions of this agreement.

This MEMORANDUM OF AGREEMENT, together with its authorizing ordinance and exhibits, if any, shall constitute the full and final agreement between the parties hereto.

Agreed to by and between the below parties on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Dennis J Campa  
Director, Department of Community Initiatives  
City of San Antonio

\_\_\_\_\_  
AGENCY